IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.829 OF 2001
IN
SUMMARY SUIT NO.4890 OF 2000

Vasudev S. Sanil and another Plaintiffs

versus

Sandip Khandekar and others Defendants

Mr.S.B.Amin for plaintiffs

Mr.J.P.Dube for defendant no.2.

Mr.Diwakar Dwivedi for defendant no.3.

Mr.S.A.Ghaisas for defendant no.5

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st June 2005

PC :

1. Learned advocate appearing for the plaintiff points out that the suit was filed as a summary suit on the basis of dishonoured cheques. The cheques have been issued by first defendant and on presentation of the same they were dishonoured. The plaint proceeds to state that the first defendant had acknowledged his liability to the plaintiff in the sum mentioned in the plaint, and therefore, issued cheques in

repayment of the same. These cheques on presentation have been dishonoured as narrated in the plaint. The cause of action as against first defendant is on dishonour of cheques and therefore, according to the plaintiff's advocate, Order XXXVII of CPC, 1908 has been rightly invoked. The suit being on dishonoured cheques, the plaintiff is entitled to a decree against defendant no.1.

2. It is brought to my notice by the learned advocate for the plaintiff that defendant no.1 was served with the writ of summons. He has not taken steps to engage an advocate. However, deceased defendant no.2 was his father, and the father and son were residing together. Since appearance is filed on behalf of deceased father, the summons for judgement was taken out and along with deceased father, father's legal representatives (defendant no.2a) were arrayed. Even defendant no.1 was served with the copy thereof. Defendant no.2a has acknowledged the receipt of the copy of summons for judgement and affidavit in support. The affidavit proving it's service is duly filed and is taken on record.

3. The summons for judgement has been directed

against other defendants as well. However, each one of them has filed affidavits disputing existence of the fourth defendant firm as also the fact that they were allegedly partners therein. It is pointed out by the defendant nos.3 and 5 that the plaint itself states that they have been arrayed as parties only because they have witnessed writings which have been executed by the first defendant. The entire deal was with the first defendant and with first defendant alone. Cheques have been issued by the first defendant. Defendants 3 and 5 have nothing to do with the transaction or the fourth defendant firm. In the light of the fact that triable issues arise and more particularly defendant no.4 firm’s existence being in dispute, defendants 3 and 5 are entitled to unconditional leave to defend.

4. As far as defendant no.2a is concerned, she is the widow of deceased second defendant. She is the mother of first defendant and wife of deceased defendant no.2. It is apparent that she has been impleaded in her capacity as her and further it is apparent that as a house-wife she is unaware of the dealings of the first and second defendants. Being a widow and her role

being in doubt, in my view, she is entitled to unconditional leave to defend.

5. As far as first defendant is concerned, he has admitted the liability, issued cheques which have been dishonoured and despite receipt of writ of summons and other related papers he has chosen not to put in appearance. As far as he is concerned there is no defence to the claim. As far as he is concerned, there is no dispute that the suit is maintainable as a summary suit. Consequently, following order.

6. ORDER :- A) There shall be a decree as prayed as against defendant no.1.

B) Original documents along with list tendered on record marked "X" for identification.

C) Further interest @ 12% p.a. on the principal amount.

D) Refund of court fee and computation of advocate’s costs as per rules.

E) Drawing up of decree is expedited.

F) Unconditional leave to defend is granted to defendants 2a, 3 and 5.

G) Liberty to apply for appropriate reliefs as far as defendant no.4 is concerned.

7. Summons for judgement disposed off in the above terms with no costs.

(S.C.DHARMADHIKARI, J.)